IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5813 OF 2005

The State of Maharashtra Applicant

versus

Bhagwant Ragho Deore Respondent

R.Y.Mirza, APP for state.

Niranjan P. Shimpi for respondent no.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th November 2005

PC :

1. The State of Maharashtra has filed present application for cancellation of bail granted by Ad-hoc Additional Sessions Judge, Malegaon in Criminal Miscellaneous Application No.29 of 2005 to the respondents-original accused. The order is of anticipatory bail. The learned Judge was exercising powers under section 439 of the Code of Criminal Procedure. He granted anticipatory bail and directed that the applicant shall be enlarged on bail in the event of arrest in connection with an offence duly registered under CR No.II-03/2005 at Nandgaon Police Station,

District Nashik. The offences punishable are under sections 3, 6 and 8 of the Essential Commodities Act.

2. Shri Mirza - learned APP appearing in support of this application states that the learned Judge has erred in granting protection to the respondent/accused without considering the fact that the investigation was not complete. The respondent was some times attending the Police Station and on most occasions not attending and/or co-operating with the investigating agency. The details pertaining to the transportation of Kerosene were not being furnished. The other grievance made was that there are previous offences registered against the accused. In these circumstances, this was not a fit case for grant of anticipatory bail.

3. In any event, the order granting anticipatory bail does not specify the duration for which it shall remain in force. He submits that an order of this nature cannot operate indefinitely and must operate for a specified time or in any event till the charge sheet is filed. He submits that unless such clarifications are issued, the orders would continue to operate indefinitely.

4. With the assistance of learned counsel for the parties, as far as contentions on merits, I have perused the order of learned Judge. While granting anticipatory bail, the Trial Judge has considered the entire matter. He has, in paragraph no.9 of the order, set out reasons as to why the respondent is being granted anticipatory bail. The specific contention that the respondent is not a dealer has been noted and therefore, the Court has granted anticipatory bail. The Court has also taken note of the settled principles and applied them to the facts of the present case. In my view, it cannot be said that the discretion has not been exercised properly or judiciously and that the order of learned Judge has in fact hampered the investigation. Therefore, there is no reason to cancel the anticipatory bail granted to the respondent.

5. However, there is much substance in the second contention of Shri Mirza insofar as duration of the anticipatory bail order. By now it is well settled that the anticipatory bail must be for a duration and cannot be granted indefinitely. If any decision is required to be

noticed, a reference to the Supreme Court decision reported in AIR-1986-SC-1042 is enough. In view of these well settled principles, the learned Sessions Judge ought to have clarified that the said order would operate till the charge sheet is filed and the applicant's remedy is to apply for bail before Regular Court. Accordingly, it is clarified that the order dated 17th March 2005 passed by the learned Ad-hoc Additional Sessions Judge, Malegaon granting anticipatory bail to the respondent on his Criminal Miscellaneous Application No.29 of 2005 shall operate till the charge sheet is filed. Application disposed of.

(S.C.DHARMADHIKARI, J.)